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November 5, 1996

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Federal Communications Commission
Office of Secretary

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Stop Code 1170
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Implementation of the Telecommunications Act of 1996; Reform of Filing Requirements and Carrier Classifications; Anchorage Telephone Utility, Petition for Withdrawal of Cost Allocation Manual;
Docket Nos. 96-193; AAD 95-91

Dear Mr. Caton:

On behalf of Cox Communications, Inc., enclosed herein for filing is an original, and eleven copies of its Reply Comments in the above referenced proceeding.

Please acknowledge receipt of this letter by date-stamping the copy marked "Stamp and Return" and returning it via our messenger. If there are any questions concerning this filing please do not hesitate to contact me.

Respectfully submitted,

Christopher D. Libertelli
Counsel for Cox Communications, Inc.

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Implementation of the Telecommunications Act of 1996;	)	CC Docket No. 96-193
	)	
Reform of Filing Requirements and Carrier Classifications	)	
	)	AAD 95-91
Anchorage Telephone Utility, Petition for Withdrawal of Cost Allocation Manual	)	

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

I. Introduction and Summary

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits these reply comments in response to the Notice of Proposed Rulemaking (the "*Notice*") issued by the Federal Communications Commission (the "Commission") and the comments filed in the above-referenced proceeding.

While most of the comments focused solely on the scope of future reporting requirements on incumbent LECs, as a new telecommunications entrant, Cox's concern in this proceeding is as a competitive local exchange company ("CLEC"). As Teleport pointed out in its comments, there are parts of the *Notice* that inexplicably muddy the ARMIS and CAM filing obligations of incumbent LECs and CLECs. Cox agrees with Teleport that any Commission initiative to collect data from new entrants should be subject to specific examination in a further notice of inquiry or proposed rulemaking.

II. The Notice Creates Ambiguities by Potentially Including CLECs in a Reporting Regime Designed Only for Incumbent LECs.

The current triggering of incumbent LEC CAM and ARMIS reporting obligations is an inflation-adjusted annual operating revenue threshold of $100 million.[1/] The *Notice* and proposed rules define annual operating revenues as "revenues from both regulated and nonregulated activities."[2/] While there is little question that most incumbent LECs will have regulated revenues of $100 million, it is far less likely that companies entering the telecommunications arena will have regulated revenues approaching this figure for some considerable transition period.

Review of the proposed definition of revenues read together with the discussion in the *Notice's* Regulatory Flexibility Analysis leads to the conclusion that full ARMIS and CAM reporting obligations might be required if a CLEC has only $1 in regulated revenues and $999,999,999 in nonregulated revenues.[3/] This would be an absurd and wasteful result.

Of greatest concern to Cox is the language of the Regulatory Flexibility Analysis section of the *Notice,* which states that "[t]hese proposed rules would also affect filing requirements for new LECs entering the local exchange market under the competitive provision of the 1996 Act to the extent that such carriers' revenues exceed the annual indexed revenue threshold in operating revenues as adjusted upward by the rules adopted and proposed herein."[4/] This statement reflects an apparent intent to subject CLECs to an internal accounting and reporting

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1/ *Notice* at ¶ 22.

2/ *Notice* at ¶ 30.

3/ *See* Comments of Anchorage Telephone Utility at 10.

4/ *Notice* at ¶ 44.

regime designed for monopoly providers. Moreover, it contradicts other statements throughout the *Notice* that the Commission's true intent is merely to clarify the going forward reporting requirements imposed on incumbent LECs.[5/]

Rote application of uniform reporting requirements would ignore the specific language on this subject contained in the 1996 Act. Section 402(b)(2)(B), for example, requires the Commission to "permit any common carrier . . . to file ARMIS reports annually, *to the extent such carrier is required to file such . . . reports.*" CLECs have never been required to file these reports, and thus are not carriers that have been "required to file such . . . reports" within the meaning of the 1996 Act.[6/] Furthermore, Section 402 deals with providing carriers with a measure of regulatory relief, not imposing new regulatory burdens.

Without any explanation or substantive discussion, the *Notice's* Regulatory Flexibility Analysis tentatively concludes that imposing ARMIS and CAM reporting requirements on smaller, new entrants, would not have any significantly adverse economic impact on these new entrants.[7/] While Cox agrees that some level of service quality or other reporting for new entrants may be desirable, detailed internal accounting based on implementing an elaborate Uniform System of Accounts ("USOA") system, and the further development of CAM and ARMIS reporting would require significant resources that necessarily would be diverted from competing with the incumbent operator. Indeed, the incumbent LEC comments in this

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5/ *See Notice* at ¶ 5 ("Under Section 64.903(a) and (b) of our rules, incumbent local exchange carriers ("ILECs") . . . must file cost allocation manuals"); *See also Notice* at ¶ 8, 44.

6/ 47 U.S.C. 402(b)(2)(B).

7/ *Notice* at ¶ 41.

proceeding demonstrate that there are significant costs involved in compliance with CAM and ARMIS reporting.[8/] If accounting and reporting requirements are regarded as burdensome and costly for incumbents with existing accounting and regulatory compliance staffs, it is difficult to imagine that they would not create a significant hardship on new entrants who do not have the resources of entrenched incumbents.

III. The 1996 Act Contains a Critical Distinction Between Incumbent LECs and New Entrants that Demands Different Rules

It is uncontrovertible that Section 251(c) of the 1996 Act imposes additional obligations on a particular class of telecommunications carrier — incumbent LECs — that are not imposed on new entrant competitive LECs.[9/] These obligations reflect Congress' acknowledgment both of incumbent LEC market power and that CLECs cannot rationally be subjected to the same level of regulatory oversight as monopoly service providers.[10/]

Consistent with the distinction between incumbent LECs and new entrants outlined above, Cox supports the Commission's tentative conclusion, which found support in the comments, that the 60-day notice provision for CAM revisions should be retained.[11/] The Commission should resist the ILEC call to gut the 60-day notice requirements for CAM revisions[12/] or rely on a

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8/ *See* Comments of Bell Atlantic at 3; Comments of US West at 4-5.

9/ Section 251(c) requires incumbent LECs to: negotiate in good faith; interconnect with other telecommunications carriers; offer unbundled access to their networks; provide notice of technical changes and offer reasonable and nondiscriminatory collocation arrangements to competitors. *See* 47 U.S.C. § 251.

10/ *See* Comment of Teleport at 2;

11/ *See* Comments of Sprint at 2; Comments of MCI at 3.

12/ *See* Comments of Puerto Rico Telephone Company at 5; Comments of Bell (continued...)

voluntary, informal "cooperative [reporting] process whereby (i) the companies keep the staff informed, and (ii) staff offers its advice."[13/] Cox agrees with the *Notice's* tentative conclusion and comments that the 60-day notice provision enables the Commission to ensure that each carrier's cost allocation manual reflects the carrier's new ventures and changes in the carrier's accounting for existing ventures.[14/]

IV. Many ARMIS Reporting Requirements Are Inappropriate for CLECs

When local telecommunications was provided by monopoly telephone companies to captive telephone ratepayers, the Commission fashioned an accounting regime to protect telephone ratepayers against cross-subsidies and other anticompetitive behavior.[15/] While there is yet no factual predicate — based on the emergence of facilities based competition — to release incumbent LECs from existing reporting requirements, extension of this reporting regime to new entrants is plainly inappropriate.

There is plainly still sufficient reason to require incumbent LEC reporting.[16/] The *Notice* quite properly observes that "continuing to require ARMIS reports from those incumbent LECs

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12/ (...continued)
Atlantic at 2; Comments of United States Telephone Association at 5; Comments of Cincinnati Bell at 3; Comments of US West at 4; Comments of NYNEX at 2; Comments of PacTel at 3.

13/ *See* Comments of GTE at 1. *See also* Comments of SWB at 5.

14/ *Notice* at ¶ 21; *See also* Comments of MCI at 3.

15/ 47 U.S.C. § 160.

16/ Recently, the Commission cited US West and five other incumbent LECs for violations of the Commission's accounting safeguards and jurisdictional separation rules. *See* US West Communications, Inc., *Consent Decree*, AAD No. 93-152, FCC No. 96-414 (released November 1, 1996) (finding improper shifting of revenues between accounting periods).

which annual operating revenues both regulated and nonregulated exceed a defined, inflation-adjusted threshold is necessary to provide us with the financial and operating data we need to administer our accounting, cost allocation, jurisdictional separations, and access charge rules, and to preserve our ability to monitor industry developments and quantify the effects of alternative regulatory proposals."[17/] The *Notice* also observes that the ARMIS and CAM reporting rules are designed to detect improper cost allocations from regulated to competitive services.

While concern about cross-subsidy and improper cost allocation are valid for incumbent LECs, they do not apply to new entrants. CLECs cannot recover monopoly rents from their subscribers and by definition lack the ability to shift the costs of competitive services onto captive ratepayers. Requiring CLECs to adopt internal USOA accounting and to file ARMIS and CAMs is therefore unnecessary. Specifically, requiring CLECs to file the Quarterly Report (43-01); the USOA Report (43-02); the Joint Cost Report (43-03); and the Access Report (43-04) would be particularly inappropriate because these reports are only relevant to the Commission's regulation of incumbent LECs.

V. To the Extent They Are Deemed Useful, Reporting Requirements Should Be Streamlined for CLECs

The Commission has a legitimate interest in gathering data about the industries it regulates. Once data is identified as important and relevant to the task, such data should be collected in a focused, simplified manner. For example, basic information about service quality,

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17/ *Notice* at ¶ 32.

switch use and miles of deployed fiber may be helpful for the Commission to monitor the growth and relative success of new entrants.[18/]

However, the Commission should issue a supplemental notice of proposed rulemaking to identify which, if any, reporting requirements should be applicable to CLECs. Because of the confusion of purpose reflected in the body of the *Notice* and the Regulatory Flexibility Analysis, there has been insufficient notice that the Commission might consider a radical expansion of existing reporting obligations to new entrants. To the extent the Commission believes any reporting requirements are necessary for CLECs, a specific supplemental notice squarely discussing the scope of proposed reporting requirements will allow for the necessary industry participation and range of viewpoints.

VI. Conclusion

Continued incumbent LEC ARMIS and CAM reporting is necessary until full-blown competition replaces the need for Commission oversight. As the *Notice* proposes, the current 60-day notice period for incumbent LEC CAM revisions should be retained.

To the extent the Commission seeks to establish some form of appropriate reporting requirements to new entrant CLECs, a Supplemental Notice of Proposed Rulemaking identifying

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18/ Streamlined variations on the Commission's Actual Usage Report (495-B); its Service Quality Report (43-05 and 43-06); the Infrastructure Report (43-07) and the Operating Data Report (43-08) may be appropriate models for the Commission's information gathering from CLECs.

the need for and scope of proposed reporting requirements would be required. Any future decision to require periodic reporting from new entrants should consider streamlining reporting as applied to these carriers.

Respectfully submitted,

COX COMMUNICATIONS, INC.

Laura H. Phillips
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November 5, 1996

CERTIFICATE OF SERVICE

I, Carolyn Hudgins, hereby certify that on the 5th day of November, 1996, a copy of the Reply Comments of Cox Communications, Inc. in Implementation of the Telecommunications Act of 1996; Reform of Filing Requirements and Carrier Classifications; Anchorage Telephone Utility, Petition for Withdrawal of Cost Allocation Manual; Docket Nos. 96-193; AAD 95-91 was sent via first-class mail, postage prepaid to the following:

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